

to X's portion and \$2,500 to Y's portion. Accordingly, for 1996, X and Y each had interest income of \$27,500 from the trust and Z had interest income of \$25,000 from the trust.

(5) This paragraph (e) is applicable to trusts meeting the requirements of paragraph (e)(1) of this section that are formed on or after May 1, 1996. This paragraph (e) may be relied on by trusts formed before May 1, 1996, if the trust has at all times met all requirements of this paragraph (e) and the grantors have reported items of income and deduction consistent with this paragraph (e) on original or amended returns. For trusts formed before May 1, 1996, that are not described in the preceding sentence, the Commissioner may permit by letter ruling, in appropriate circumstances, this paragraph (e) to be applied subject to appropriate terms and conditions.

(f) *Effective date.* The rules of this section generally apply to taxable years beginning after December 31, 1960. Paragraph (e)(5) of this section contains rules of applicability for paragraph (e) of this section. In addition, the last sentences of paragraphs (b), (c)(1), and (c)(2) *Example 1* and *Example 3* of this section are effective as of January 1, 1997.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 8080, 51 FR 9952, Mar. 24, 1986; T.D. 8668, 61 FR 19191, May 1, 1996; T.D. 8697, 61 FR 66592, Dec. 18, 1996]

§ 301.7701-5 Domestic, foreign, resident, and nonresident persons.

A domestic corporation is one organized or created in the United States, including only the States (and during the periods when not States, the Territories of Alaska and Hawaii), and the District of Columbia, or under the law of the United States or of any State or Territory. A foreign corporation is one which is not domestic. A domestic corporation is a resident corporation even though it does no business and owns no property in the United States. A foreign corporation engaged in trade or business within the United States is referred to in the regulations in this chapter as a resident foreign corporation, and a foreign corporation not engaged in trade or business within the United States, as a nonresident foreign corporation. A partnership engaged in

trade or business within the United States is referred to in the regulations in this chapter as a resident partnership, and a partnership not engaged in trade or business within the United States, as a nonresident partnership. Whether a partnership is to be regarded as resident or nonresident is not determined by the nationality or residence of its members or by the place in which it was created or organized.

[32 FR 15231, Nov. 3, 1967, as amended by T.D. 8813, 64 FR 4970, Feb. 2, 1999]

§ 301.7701-6 Definitions; person, fiduciary.

(a) *Person.* The term *person* includes an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group. The term also includes a guardian, committee, trustee, executor, administrator, trustee in bankruptcy, receiver, assignee for the benefit of creditors, conservator, or any person acting in a fiduciary capacity.

(b) *Fiduciary*—(1) *In general.* Fiduciary is a term that applies to persons who occupy positions of peculiar confidence toward others, such as trustees, executors, and administrators. A fiduciary is a person who holds in trust an estate to which another has a beneficial interest, or receives and controls income of another, as in the case of receivers. A committee or guardian of the property of an incompetent person is a fiduciary.

(2) *Fiduciary distinguished from agent.* There may be a fiduciary relationship between an agent and a principal, but the word agent does not denote a fiduciary. An agent having entire charge of property, with authority to effect and execute leases with tenants entirely on his own responsibility and without consulting his principal, merely turning over the net profits from the property periodically to his principal by virtue of authority conferred upon him by a power of attorney, is not a fiduciary within the meaning of the Internal Revenue Code. In cases when no legal trust has been created in the estate controlled by the agent and attorney, the liability to make a return rests with the principal.

(c) *Effective date.* The rules of this section are effective as of January 1, 1997.

[T.D. 8697, 61 FR 66593, Dec. 18, 1996]

§ 301.7701-7 Trusts—domestic and foreign.

(a) *In general.* (1) A trust is a United States person if—

(i) A court within the United States is able to exercise primary supervision over the administration of the trust (court test); and

(ii) One or more United States persons have the authority to control all substantial decisions of the trust (control test).

(2) A trust is a United States person for purposes of the Internal Revenue Code (Code) on any day that the trust meets both the court test and the control test. For purposes of the regulations in this chapter, the term *domestic trust* means a trust that is a United States person. The term *foreign trust* means any trust other than a domestic trust.

(3) Except as otherwise provided in part I, subchapter J, chapter 1 of the Code, the taxable income of a foreign trust is computed in the same manner as the taxable income of a nonresident alien individual who is not present in the United States at any time. Section 641(b). Section 7701(b) is not applicable to trusts because it only applies to individuals. In addition, a foreign trust is not considered to be present in the United States at any time for purposes of section 871(a)(2), which deals with capital gains of nonresident aliens present in the United States for 183 days or more.

(b) *Applicable law.* The terms of the trust instrument and applicable law must be applied to determine whether the court test and the control test are met.

(c) *The court test—*(1) *Safe harbor.* A trust satisfies the court test if—

(i) The trust instrument does not direct that the trust be administered outside of the United States; and

(ii) The trust in fact is administered exclusively in the United States; and

(iii) The trust is not subject to an automatic migration provision described in paragraph (c)(4)(ii) of this section.

(2) *Example.* The following example illustrates the rule of paragraph (c)(1) of this section:

Example. A creates a trust for the equal benefit of A's two children, B and C. The trust instrument provides that DC, a State Y corporation, is the trustee of the trust. State Y is a state within the United States. DC administers the trust exclusively in State Y and the trust instrument is silent as to where the trust is to be administered. The trust is not subject to an automatic migration provision described in paragraph (c)(4)(ii) of this section. The trust satisfies the safe harbor of paragraph (c)(1) of this section and the court test.

(3) *Definitions.* The following definitions apply for purposes of this section:

(i) *Court.* The term *court* includes any federal, state, or local court.

(ii) *The United States.* The term *the United States* is used in this section in a geographical sense. Thus, for purposes of the court test, the United States includes only the States and the District of Columbia. See section 7701(a)(9). Accordingly, a court within a territory or possession of the United States or within a foreign country is not a court within the United States.

(iii) *Is able to exercise.* The term *is able to exercise* means that a court has or would have the authority under applicable law to render orders or judgments resolving issues concerning administration of the trust.

(iv) *Primary supervision.* The term *primary supervision* means that a court has or would have the authority to determine substantially all issues regarding the administration of the entire trust. A court may have primary supervision under this paragraph (c)(3)(iv) notwithstanding the fact that another court has jurisdiction over a trustee, a beneficiary, or trust property.

(v) *Administration.* The term *administration* of the trust means the carrying out of the duties imposed by the terms of the trust instrument and applicable law, including maintaining the books and records of the trust, filing tax returns, managing and investing the assets of the trust, defending the trust from suits by creditors, and determining the amount and timing of distributions.

(4) *Situations that cause a trust to satisfy or fail to satisfy the court test.* (i) Except as provided in paragraph (c)(4)(ii)